

THE HONORABLE TIMOTHY W. DORE
Chapter 7
Place: 700 Stewart St., Court Room 8106
Seattle, WA 98101
Hearing Date: August 24, 2018
Time: 9:30 a.m.
Response Date: August 17, 2018

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

CASE NO. 15-16254

Jason Wesley Davis,

Debtor.

TRUSTEE'S AMENDED OBJECTION TO
HOMESTEAD EXEMPTION

I. OBJECTION

The trustee, Ronald G. Brown, by and through his attorney, Michael P. Klein, seeks an order sustaining the trustee's objection to the debtor's claim of homestead exemption as follows. The debtor has no basis to claim a homestead exemption at this late date. There simply was no value in the home to exempt at the time this case was filed. And, any increase in value enures to the benefit of the estate and not the debtor. The debtor filed a Chapter 11 petition on October 25, 2017. The original schedules were filed on November 10, 2015. See Schedules A, B and C, attached as Exhibit 1. According to Schedule A, the debtor claimed that the home had a value of \$1,182,399.00 on the date of filing. Schedule D stated that the home had secured claims against it of \$1,283,460.00. The debtor utilized the federal exemptions and did not claim a homestead exemption on Schedule C pursuant to 11 U.S.C. §522(d)(1). On June 23, 2016, the case was converted to Chapter 7 and Ronald G. Brown was appointed trustee. The order to file post-conversion schedules was likewise entered on June 23, 2016. On July 11, 2016, the debtor filed schedules and valued the home at the same value, \$1,182,399.00, as was initially stated when the case was filed. See post-conversion schedules, attached as Exhibit 2. The amount of the secured claim remained the same and the debtor did not file a homestead exemption.

One day before the hearing to consider the debtor's motion to abandon, the debtor filed an amended

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1 Schedule C and claimed an exemption of \$125,000.00. See copy of amended Schedule C, attached as
2 Exhibit 3. The debtor still claims that the home has a value of only \$1,182,399.00. The testimony by
3 the Kai Rainey, real estate broker for RE/MAX, is that the property now has a value of \$1,650,000.00
4 and, after costs of sale (commission, excise tax, title and escrow fees), would leave approximately
5 \$1,500,000.00. Declaration of Real Estate Broker Kai Rainey, p. 2, lines 14 – 15. That would be
6 enough to pay administrative claims and most of the priority claims of the IRS and the United States
7 Trustee.
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9 The Ninth Circuit has clearly stated that any increase in value benefits the estate:

10 The bankruptcy code states that a bankruptcy estate is comprised of:

11 Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as
12 are earnings from services performed by an individual debtor after the commencement of the
13 case.

14 11 U.S.C. §541(a)(6). We interpret this language to mean that appreciation enures to the
15 bankruptcy estate, not the debtor.

16 In re Reed, 940 F.2d 1317, 1323 (9th Cir. 1991) (internal citations omitted)(emphasis added). Reed
17 therefore created a bright-line rule. When the bankruptcy estate retains an interest in property, all
18 appreciation of such property enures to the benefit of the estate. This is consistent with statutory
19 construction. No matter what the general provisions of the rest of the Bankruptcy Code provide, since
20 §541(a)(6) is so specific it prevails over any other general provisions that could be interpreted to the
21 contrary. "It is a well-settled principle of construction that specific terms covering the given subject-
22 matter will prevail over general language of the same or another statute which might otherwise prove
23 controlling." Kepner v. U.S., 195 U.S. 100, 24 S.Ct. 797, ____ (1904). It is also consistent with the
24 "snapshot rule" that exemptions and value must be determined on the date of filing as set forth in the
25 case of In re Jacobson, 676 F.3d 1193 (9th Cir. 2012). Since, the debtor did not have any equity in the
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TRUSTEE'S AMENDED OBJECTION TO
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1 property at the date of filing, there was no value to exempt. Therefore, any increase in value goes to the
2 estate to pay creditors.
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4 II. CONCLUSION

5 Wherefore, the Chapter 7 trustee seeks an order denying the debtor a homestead exemption or at
6 an amount of zero.
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8 Dated: July 26, 2018
9

10 /s/ Michael P. Klein
11 Michael P. Klein, WSBA#18079
12 Attorney for Chapter 7 Trustee
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TRUSTEE'S AMENDED OBJECTION TO
HOMESTEAD EXEMPTION - 3

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